

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 12 MAY 2005

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To:

see form PCT/ISA/220

0013

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/B2005/000163

International filing date (day/month/year)
24.01.2005

Priority date (day/month/year)
26.01.2004

International Patent Classification (IPC) or both national classification and IPC
B65D81/00, A47J31/00, A47J31/40

Applicant
TUTTOESPRESSO S.P.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/IB2005/000163

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
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International application No.
PCT/B2005/000163

Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	11-14
	No: Claims	1-10, 15-20
Inventive step (IS)	Yes: Claims	11-13
	No: Claims	14
Industrial applicability (IA)	Yes: Claims	1-20
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Re Item V

- 1.) The present application does not meet the requirements of Article 52(1) EPC, because **the subject-matter of claims 1-10, 15-20 is not new** in the sense of Article 54(1) and (2) EPC.

Document **US-A-5 242 702** discloses (see in particular column 6, lines 11-47 and figs 1-3) a process according to claims 1-6 and a capsule according to the first part of claim 7 where the opening area is varying gradually (i.e. increasing and decreasing) according to the internal pressure, further comprising a capsule with hinge means (i.e. a bendable area, see in particular fig. 3) for opening outwardly during dispensing and a filter element (4) spaced from the bottom wall (16, see fig. 1).

Document US-A-5 242 702 therefore anticipates claims 1-10, 18-20.

Document **WO-A-02 076 270** discloses (see page 5, line 15 - page 7, line 20 and figs 1, 2) a process according to the first part of claim 1 using a puncturing member (4) which is equal to the dispensing opening of the capsule (2)(see page 6, lines 6-9). Water can therefore only be dispensed if the pressure of the water deforms the wall of the opening, thus varying the area of the opening (i.e. increasing the area as the internal pressure increases; decreasing the area as the internal pressure decreases).

Consequently, WO-A-02 076 270 anticipates claims 1-5, 7-9, 15-17.

Document **EP-A-1 243 210** discloses (see paragraph 30 and figs 4-6) a process according to the first part of claim 1 where the opening member gradually acts on the movable portion (20), thus varying the area of the dispensing opening from a closed to a half opened and finally to a fully open area when the pressure increases inside the internally concave capsule. Further the dispensing area decreases before all beverage has been dispensed (see last three lines of paragraph 30)
Document EP-A-1 243 210 therefore anticipates claims 1-3, 7-9.

- 2.) The dependent claim 14 do not contain any additional features which, in combination with the features to the claim to which it refers, involve an inventive step since they come within the scope of the customary practice followed by persons skilled in the art [see documents WO-A-02 076 276, or EP-A-1 243 210 which both disclose capsules

which have at least at its lower borders inclined dispensing walls (see EP-A-1 243 210 at the end of reference 30 in fig. 4)].

Consequently, **the subject-matter of claim 14 lacks an inventive step** (Articles 52(1) and 56 EPC).

- 3.) The combination of the features of dependent **claims 11-13** is neither known from, nor rendered obvious by, the available prior art.

Re Item VII

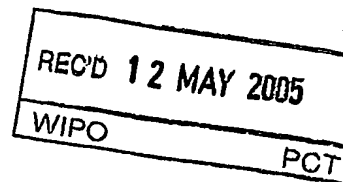
The application does not meet the requirements of Article 84 EPC, because **claim 5 is not clear** as opening member (9a) forms not part of the movable outlet lid portion of said side wall (F).

It is supposed that lines 30 of claim 5 should read as follows (see page 7, lines 211-13 of the description):

"... said wall (1b) and an opening member (9a) of a puncturing member (9) ...".

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**WRITTEN OPINION OF THE
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International application No..
PCT/B2005/000163

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	11-14
	No: Claims	1-10, 15-20
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